

1993 Supp (3) Supreme Court Cases 168

(BEFORE P.B. SAWANT AND N.P. SINGH, JJ.)

REKHA CHATURVEDI (SMT)

.. Petitioner;

Versus

UNIVERSITY OF RAJASTHAN

AND OTHERS

.. Respondents.

SLP (C) No. 6324 of 1992[†], decided on January 13, 1993

Service Law — Recruitment — Selection — Judicial review of, at a delayed stage — Effect on relief — Selection of University teachers — Selection Committee taking into consideration the requisite educational qualifications as on the date of selection rather than the last date for preferring applications — However, case coming up for decision after about eight long years of the appointment of selected candidates and the minimum

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3 (1971) 2 SCC 188; 1971 Supp SCR 549

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[†] From the Judgment and Order dated November 20, 1991 of the Rajasthan High Court in D.B. Civil Spl. Appeal No. 226 of 1991

qualifications although relaxable no record to show whether and in what manner the merits of the candidates were weighed and the minimum qualifications relaxed — In such circumstances the selection although illegal, refused to be set aside — Guidelines for future laid down — Qualifications for appointment — Material date for fulfilment of — Constitution of India, Art. 136 — Relief — Universities

Service Law — Recruitment — Qualifications — Relevant date for adjudging — Except where date specified in the advertisement/notification, the date for scrutiny of qualifications will be the last date for filing the applications and not the date of selection

Held :

In absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for scrutiny of the qualifications will be the last date for making the applications. When the Selection Committee took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. (Para 10)

A.P. Public Service Commission v. B. Sarat Chandra, (1990) 2 SCC 669; 1990 SCC (L&S) 377; (1990) 13 ATC 708; *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society v. M. Tripura Sundari Devi*, (1990) 3 SCC 655; 1990 SCC (L&S) 520; (1990) 14 ATC 766, referred to

Connected references : S. Malik : Supreme Court (L&S) Digest, Vol. 1, §§[19218], Vol. 5, §§[19215-B], [19217-C], [19232-V]

However, at this stage when almost eight years have elapsed after the appointment of the selected candidates and there is no record to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the minimum qualifications in favour of some in exercise of the discretionary powers vested in it under the University Ordinance, the Court would not set aside the selections despite the aforesaid illegality. (Paras 8 and 11)

Connected references : S. Malik : Supreme Court (L&S) Digest, Vol. 5, §§[19216-G], [19216-K]

The following guidelines are being laid down for future selections process:

- A. The qualifications advertised by the University for the posts should not be at variance with those prescribed by its Ordinance/Statutes.
- B. The candidates selected must be qualified as on the last date for making applications or on a date specified in the advertisement/notification for the purpose and not on any subsequent date.
- C. Unless the advertisement/notification specifically states that the qualifications would be relaxed and also the conditions on which they would be relaxed, any relaxation of the minimum required qualifications would be illegal.
- D. The proceedings of selection must contain the reasons for making relaxations, if any, in respect of each of the candidates in whose favour relaxation was made.
- E. The minutes of the meetings of the Selection Committee should be preserved for a sufficiently long time, and if the selection process is challenged until the challenge is finally disposed of. (Para 11)

SLP dismissed

H-M/ATLL/11884/SLA

Advocates who appeared in this case :

S.K. Jain, Advocate, for the Petitioner;

Manoj Swarup, Ms Lalita Kohli (For M/s Manoj Swarup & Co.) and S.K. Bhattacharya, Advocates, for the Respondents.

ORDER

1. By this petition, the petitioner has challenged the appointment of six respondents from General Category as Assistant Professors (Lecturers) in the Department of History in the University of Rajasthan.

2. The University invited applications by its advertisement dated October 12, 1983 for appointment to 10 posts of Assistant Professors (Lecturers). The last date for submitting applications was November 14, 1983. Out of 112 applications received, the Scrutiny Committee of the University on April 25, 1984 recommended 106 candidates for being interviewed, the remaining six being found ineligible for the posts. Out of the 106 candidates so recommended, only 65 candidates appeared for interview, out of which the Scrutiny Committee selected 8 candidates who are respondents 5 to 12 before us. Out of the 8, two were earmarked for the reserved posts. We are not concerned with the selection of the said two candidates under the reserved category. The Scrutiny Committee also placed five other candidates including the present petitioner on the waiting list.

3. The minimum qualifications for appointment to the post of Assistant Professor (Lecturer) as laid down by Ordinance 141-B of the Handbook of the University of Rajasthan, Part II, Volume I are as follows:

"141-B. The following shall be the minimum qualifications for University teachers in the Faculties of Arts, Fine Arts, Social Sciences, Commerce and Science:

A. Minimum qualifications for Lecturers/Research Associates in the Faculties of Arts, Social Sciences, Science and Commerce:

(Except in the subjects of English, Modern European Languages, Physical Education, Health Education & Sports Journalism and Home Science)

(a) A Doctorate degree or research work of an equally high standard; and

(b) good academic record with at least a second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or an equivalent degree from a foreign University.

Having regard to the need for developing inter-disciplinary programmes, the degree in (a) and (b) above may be in relevant subjects:

Provided that if the Selection Committee is of the view that the research work of a candidate as evident either from his thesis

or from his published work is of a very high standard, it may relax any of the qualifications prescribed in (b) above:

- a Provided further that if a candidate possessing a Doctorate degree or equivalent research work is not available or is not considered suitable, a person possessing a good academic record (weightage being given to M. Phil. or equivalent degree or research work of quality) may be appointed provided he has done research work for at least two years or has practical experience in a research laboratory/organisation, on the condition that he will have to obtain a Doctorate degree or give evidence of research of high standard within eight years of his appointment, failing which he will not be able to earn future increments until he fulfils these requirements."
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- c Although these were the qualifications required by the University Ordinance, the advertisement inviting applications stated the following qualifications as necessary for being eligible to the posts:

"Assistant Professors (Lecturers) :

(Except in the subject of Drawing & Painting and Dramatics, Education, Management Studies and English)

- d (a) A Doctorate's degree or research work of an equally high standard and

(b) good academic record with at least second class (C in the seven point scale) Master's degree in a relevant subject from an Indian University or/equivalent degree from a foreign University.

- e Having regard to the need for developing the interdisciplinary programmes, the degrees in (a) and (b) above, may be in relevant subjects:

Provided that if the Selection Committee is of the view that the research work of a candidate as evident either from his thesis or from his published work is of very high standard, it may relax any of the qualifications prescribed in (b) above:

- f Provided further that if a candidate possessing a Doctor's degree or equivalent research work is not available or is not considered suitable, a person possessing a good academic record, (weightage being given to M. Phil. or equivalent degree or research work of quality) may be appointed provided he has done research work for at least two years or has practical experience in a research laboratory/organisation on the condition that he will have to obtain a Doctor's degree or give evidence of research of high standard within eight years of his appointment, failing which he will not be able to earn future increment until he fulfils these requirements.
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- h *Explanation.—* For determining 'good academic record' the following criteria shall be adopted:

(i) A candidate holding a Ph.D. degree should possess at least a second class Master's degree; or

(ii) a candidate without a Ph.D. degree should possess a high second class Master's degree and second class in the Bachelor's degree; or

(iii) a candidate not possessing Ph.D. degree but possessing second class Master's degree should have obtained first class in the Bachelor's degree.

2. Persons having secured marks more than the mid point of the prescribed minimum marks for passing an examination in the second division and the prescribed minimum marks for passing an examination in the first division by a university shall be deemed to have passed that examination in the high second class."

It will be apparent that there was a divergence in the qualifications as per the University Ordinance (as quoted in the written submissions on behalf of respondent No. 5) and the qualifications as per the advertisement as stated in the rejoinder of the petitioner since in particular the Explanation does not find place in the Ordinance. The University itself has produced before us neither the Ordinance nor the advertisement issued. In the absence of a copy of the relevant Ordinance, however, it is not possible to say as to whether the qualifications mentioned in the advertisement were at variance with those mentioned in the advertisement *sic* Ordinance. Be that as it may.

4. It will thus be obvious from the requirement of the aforesaid qualifications, that on the last date for submitting the applications, a candidate applying for the said posts should have had (a) a Doctorate degree (in the relevant subject), *or* research work of an equally high standard (in the relevant subject), *and* (b) good academic record with at least a second class Master's degree (in the relevant subject). However, if the Selection Committee was of the view that the research work of a candidate as evident either *from his thesis* or *from his published work* was of a very high standard, the Scrutiny Committee could relax the qualification that the candidate should have had at least a Doctorate degree or research work of an equally high standard and good academic record with at least a second class Master's degree. Secondly, if the candidate possessing a Doctorate degree or equivalent research work was not available or even if available, was not suitable, the candidate possessing a good academic record (preferably M. Phil *or* equivalent degree *or* research work of quality) could also be appointed provided he had done research work for at least two years *or* had practical experience in a research laboratory/organisation. However, this relaxation could be given on the condition that the candidate would obtain a Doctorate degree *or* give evidence of research of high standard within eight years of his appointment. If he did not satisfy the second requirement, all that he could be visited with was a handicap that he would not be able to earn future

a increments until he fulfilled the said requirement. It is, therefore, obvious that a Doctorate degree was not a must and the lack of Doctorate degree could be made up by either of the qualifications laid down above. None of the candidates except respondent 10 who had applied and appeared for interview (including the petitioner) possessed the Doctorate degree by the last date of submitting the applications for the posts.

b 5. The six candidates from the general category whose appointment is challenged before us and who are respondents 5, 6, 7, 8, 9, 10 and 11 before us had on the relevant date the following qualifications according to the Scrutiny Committee:

	Sl. No.	Name	Respon- -dent No.	Doctor- ate degree	Publish- ed works of high standard	Good record in M.A.	Good record in B.A.	2 Years Re- search
c	1.	Dr. [Miss] Santosh Sharma	11	No [Award ed on 4.1.85]	No	Yes	Yes	No
d	2.	Shri Krishna Gopal Sharma	6	No	No	Yes	Yes	No
	3.	Dr. [Mrs] Vibha Upadhyaya	10	Yes	No	Yes	Yes	Yes
e	4.	[Miss] Saroj Sharma	7	No	No	Yes	Yes	No
	5.	Dr. Shyam Singh Ratnawat	5	[Award ed on 14.12.84]	Yes	Yes	No	Yes
f	6.	[Miss] Pramila Sharma	8	No	No	Yes [Pass- ed M.A. in 1982]	Yes	Yes

g 6. It is apparent that respondent 5 had no Doctorate degree. He had good academic record in M.A. but did not have good record in B.A. He had published work of high standard and also two years' research work to his credit. Respondent 6 had no Doctorate degree. He had, however, good academic record both in M.A. and B.A.; but had neither any published work of high standard nor two years research experience, to his credit.
h Respondent 7 had no Doctorate degree. She had, however, good academic

record both in M.A. and B.A. She had not published work of high standard nor had she two years' research work to her credit. Respondent 8 had no Doctorate degree. She had, however, good academic record both in M.A. and B.A. though she did not have to her credit published work of high standard nor two years' research work. Respondent 10 had Doctorate degree and also a good academic record both in M.A. and B.A. She had also experience of two years' research work though there was no published work of high standard to her credit. Respondent 11 had no Doctorate degree. She had, however, good academic record both in M.A. and B.A. She had no published work of high standard or two years' research work to her credit.

7. It is on record that respondents 5 and 11 were awarded Doctorate degree on December 14, 1984 and January 4, 1985 respectively which is of course irrelevant since the qualifications had to be judged with reference to the last date for submitting the applications for the posts.

8. Thus except in the case of respondent 10, the qualifications of the other selected candidates had to be relaxed by the Scrutiny Committee. However, there is no record of the minutes of the meetings of the Scrutiny Committee to show whether and in what manner the Scrutiny Committee had applied its mind and relaxed their qualifications. The affidavit filed on behalf of the University shows that the minutes, if kept, were destroyed.

9. It was sought to be argued by Shri Manoj Swarup on behalf of the University that since at the time of the selection, respondents 5 and 11 had obtained their Doctorate degrees they could be said to have fulfilled the qualifications. He also argued that since respondents 6 and 7 were registered for Ph.D. on January 22, 1982 and May 26, 1982 respectively, by the time of the selection they had put in research work connected with their thesis and in February 1985, viz., the date of selection, they had about 3 years' experience in research work. As regards respondent 8, she had good academic record both in M.A. and B.A. and the Scrutiny Committee could under the Ordinance relax the qualifications as admittedly sufficient number of candidates with the Doctorate degree were not available. He also urged in this connection that even the petitioner did not have the Doctorate degree. He further submitted that it was open to the Scrutiny Committee to weigh the overall qualifications of the candidates and relax the required qualifications in favour of the deserving and suitable candidates which the Scrutiny Committee did or should be deemed to have done. The Scrutiny Committee was a high power Committee and after interviewing 65 candidates, it had selected only 8 candidates and had placed them in the order of merit. The Court should not, therefore, interfere with the said selection. He further pointed out that the candidates had already been appointed in February 1985 and they have been working ever since till date. Some of them are also due for

a promotion to the higher posts in the near future. Their record of teaching so far has been excellent and unblemished. Whatever may be the defects in the selections, this Court may not interfere with the said process of selection at this late stage.

b 10. The contention that the required qualifications of the candidates should be examined with reference to the date of selection and not with reference to the last date for making applications has only to be stated to be rejected. The date of selection is invariably uncertain. In the absence of knowledge of such date the candidates who apply for the posts would be unable to state whether they are qualified for the posts in question or not, if they are yet to ~~acquire~~ the qualifications. Unless the advertisement mentions a fixed date with reference to which the qualifications are to be judged, whether the said date is of selection or otherwise, it would not be possible for the candidates who do not possess the requisite qualifications in praesenti even to make applications for the posts. The uncertainty of the date may also lead to a contrary consequence, viz., even those candidates who do not have the qualifications in praesenti and are likely to acquire them at an uncertain future date, may apply for the posts thus swelling the number of applications. But a still worse consequence may follow, in that it may leave open a scope for malpractices. The date of selection may be so fixed or manipulated as to entertain some applicants and reject others, arbitrarily. Hence, in the absence of a fixed date indicated in the advertisement/notification inviting applications with reference to which the requisite qualifications should be judged, the only certain date for the scrutiny of the qualifications will be the last date for making the applications. We have, therefore, no hesitation in holding that when the Selection Committee in the present case, as argued by Shri Manoj Swarup, took into consideration the requisite qualifications as on the date of selection rather than on the last date of preferring applications, it acted with patent illegality, and on this ground itself the selections in question are liable to be quashed. Reference in this connection may also be made to two recent decisions of this Court in *A.P. Public Service Commission, Hyderabad v. B. Sarat Chandra*¹ and *District Collector & Chairman, Vizianagaram Social Welfare Residential School Society, Vizianagaram v. M. Tripura Sundari Devi*².

g 11. However, for the reasons which follow, we are not inclined to set aside the selections in spite of the said illegality. The selected candidates have been working in the respective posts since February 1985. We are now in January 1993. Almost eight years have elapsed. There is also no record before us to show as to how the Selection Committee had proceeded to weigh the respective merits of the candidates and to relax the

h 1 (1990) 2 SCC 669; 1990 SCC (L&S) 377; (1990) 4 SLR 235; (1990) 13 ATC 708

2 (1990) 3 SCC 655; 1990 SCC (L&S) 520; (1990) 4 SLR 237; (1990) 14 ATC 766

minimum qualifications in favour of some in exercise of the discretionary powers vested in it under the University Ordinance. If the considerations which weighed with the Committee in relaxing the requisite qualifications were valid, it would result in injustice to those who have been selected. We, however, feel it necessary to emphasise and bring to the notice of the University that the illegal practices in the selection of candidates which have come to light and which seem to be followed usually at its end must stop forthwith. It is for this purpose that we lay down the following guidelines for the future selection process:

- A. The University must note that the qualifications it advertises for the posts should not be at variance with those prescribed by its Ordinance/Statutes.
- B. The candidates selected must be qualified as on the last date for making applications for the posts in question or on the date to be specifically mentioned in the advertisement/notification for the purpose. The qualifications acquired by the candidates after the said date should not be taken into consideration, as that would be arbitrary and result in discrimination. It must be remembered that when the advertisement/notification represents that the candidates must have the qualifications in question, with reference to the last date for making the applications or with reference to the specific date mentioned for the purpose, those who do not have such qualifications do not apply for the posts even though they are likely to acquire such qualifications and do acquire them after the said date. In the circumstances, many who would otherwise be entitled to be considered and may even be better than those who apply, can have a legitimate grievance since they are left out of consideration.
- C. When the University or its Selection Committee relaxes the minimum required qualifications, unless it is specifically stated in the advertisement/notification both that the qualifications will be relaxed and also the conditions on which they will be relaxed, the relaxation will be illegal.
- D. The University/Selection Committee must mention in its proceedings of selection the reasons for making relaxations, if any, in respect of each of the candidates in whose favour relaxation is made.
- E. The minutes of the meetings of the Selection Committee should be preserved for a sufficiently long time, and if the selection process is challenged until the challenge is finally disposed of. An adverse inference is liable to be drawn if the minutes are destroyed or a plea is taken that they are not available.

12. Although, therefore, for reasons stated above, we deem it inadvisable to interfere in the selections made in the present case, we
a direct that the University and its Selection Committee should observe the above norms in all future selections.

13. The special leave petition is dismissed subject to the above directions.
